

## DEPARTMENT OF STATE REVENUE

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### ISSUE

#### **Sale of Tangible Personal Property with Services – Sales Tax**

**Authority:** IC 6-2.5-4-1(e); IC 6-2.5-1-5; 45 IAC 2.2-4-1; Comm. Directive # 21; Comm. Directive #22; Comm. Directive #23; The Frame Station, Inc., Ind. Tax Ct., 2002; Eric Howland, Ind. Tax Ct., 2003

#### **IC 6-2.5-4-1. Selling at Retail**

(a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

....

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) ...any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect the property transferred before its transfer and which are separately stated on the transferor's records.

[1980]

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

[Effective March 18, 2004]

#### **IC 6-2.5-1-5. "Gross retail income" defined**

(a) ..."gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction...without any deduction for:

....

- (4) delivery charges;
- (5) installation charges

[Effective January 1, 2004]

....

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(b) "Gross retail income" does not include...gross receipts attributable to:

....

(6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

[Effective March 18, 2004]

## I. GENERAL STATEMENT

All sales of tangible personal property [FN 1] are subject to sales tax. All sales of labor and services are exempt from sales tax. A transaction which includes both the sale of tangible personal property and the sale of related services is subject to tax if the service has been performed prior to the transfer of the property. Services performed after the transfer of the property are not subject to sales tax.

## II. TRANSFER OF PROPERTY

The transfer of property occurs when the buyer: (1) agrees to buy property from a seller; (2) pays the purchase price; and, (3) takes ownership and possession of the property. [FN 2] "It is a general rule...that in case of sale of personal property, where any act remains to be done before the sale is complete, the title remains in the seller." [FN 3] Effective March 18, 2004, the transfer of tangible personal property in a retail transaction is deemed to occur after delivery.

## III. SERVICES PERFORMED PRIOR TO THE TRANSFER OF PROPERTY

Indiana Code 6-2.5-4-1(e) permits the imposition of sales tax on otherwise non-taxable services when the services are performed with respect to property prior to the transfer of the property to the buyer. Labor and/or services performed prior to the transfer of property are considered to be part of a unitary transaction and subject to sales tax.

A "unitary" transaction includes all items of tangible personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated. [FN 4] Although this would appear to exempt any transaction in which the seller separately states the cost of labor and/or services, this is not the case. One must look to the "true object" of the transaction. What does a buyer intend to buy---an individual's skills or a tangible end result of those skills. [FN 5]

A retail unitary transaction exists when the transfer of the property and rendition of services are "inextricable and indivisible." [FN 6] A *retail unitary transaction* is taxable to the extent that income from the transaction represents "...service performed in respect to the property transferred *before its transfer* and which are separately stated on the transferor's records." [FN 7] (emphasis added)

The Indiana Tax Court has been consistent in rulings, where the property and related services are dependent on each other in order to provide the buyer with a viable end product, the total gross selling price is subject to sales tax. [FN 8] This is irrespective of the fact that the seller might separately state the charges for property and services on the buyer's invoice.

## IV. SERVICES PERFORMED AFTER THE TRANSFER OF PROPERTY

Labor or services performed after the transfer of property to the buyer are not subject to sales tax. In those instances in which the buyer obtains title to the property and the seller is subsequently required to perform additional service on the property, no sales tax is due on the service performed after the transfer.

## V. INSTALLATION CHARGES

Effective March 18, 2004 separately stated installation charges are not subject to sales tax. Installation charges included in the total selling price of tangible personal property are considered to be part of a unitary transaction and subject to the collection of sales tax.

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[FN 1] IC 6-2.5-1-27 (effective January 1, 2004) defines tangible personal property as something that can be seen, weighed, measured, felt, or touched or in any other manner perceptible to the senses. The term includes electricity, gas, water, steam and prewritten computer software.

[FN 2] *The Frame Station, Inc.*, 771 N.E.2d 129 (Ind. Tax 2002)

[FN 3] *Farmer's Nat'l Bank of Sheridan v Coyner*, 88 N.E. 856, 858 (Ind. Ct. App. 1909)

[FN 4] IC 6-2.5-1-1(a)

[FN 5] *Accountants Computer Services, Inc. v. Kosydar*, 298 N.E.2d 519 (Ohio 1973)

[FN 6] *Martin Marietta*, 398 N.E.2d 1311 (Ind. Ct. App. 1979)

[FN 7] IC 6-2.5-4-1(e)

[FN 8] *The Frame Station, Inc.*, 771 N.E.2d 129 (Ind. Tax 2002); *Eric Howland*, 790 N.E.2d 627 (Ind. Tax 2003)